

AMENDED IN SENATE MARCH 23, 2011

SENATE BILL

No. 530

Introduced by Senator Wright

February 17, 2011

An act to add Part 14.5 (commencing with Section 33001) to Division 2 of the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 530, as amended, Wright. Taxation: direct broadcast satellite television service: tax.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose, for the privilege of selling ~~video~~ *direct broadcast satellite television* service, a tax on a direct broadcast satellite television service provider at the rate of 6% of its gross revenues, as defined. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law, as specified. The revenues from this tax would be deposited in the Local Safety and Protection Account established in the Transportation Tax Fund, a continuously appropriated fund. By depositing revenues into a continuously appropriated fund, this bill would make an appropriation.

Because this bill would expand the application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute, but its operative date would depend on its effective date.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Part 14.5 (commencing with Section 33001) is
2 added to Division 2 of the Revenue and Taxation Code, to read:

3
4 PART 14.5. SATELLITE VIDEO FUND FOR PUBLIC SAFETY
5 TAX

6
7 CHAPTER 1. GENERAL PROVISIONS AND FINDINGS

8
9 33001. This part is known and may be cited as the Satellite
10 Video Fund for Public Safety Tax.

11 33002. The Legislature finds and declares all of the following:

12 (a) As a matter of statewide concern and for many reasons,
13 including those articulated herein, the Legislature hereby enacts
14 a new state tax on direct broadcast satellite (DBS) television service
15 providers. The purpose of this new tax is to provide funding to
16 support programs for local law enforcement and other public safety
17 services so that those programs can be maintained while funding
18 for similar programs has been reduced due to the combination of
19 the economic recession and the state's budgetary problems.

20 (b) DBS services use satellite and terrestrial technologies to
21 provide video programming to homes and businesses in California.
22 Companies that provide DBS services benefit from both state and
23 local infrastructure as well as state and local laws and policies that
24 facilitate the receipt of the satellite programming in homes and
25 businesses.

26 (c) DBS service providers maintain offices and other property
27 within some cities and counties in California. DBS providers have

1 employees and contractors throughout California which sell, install,
2 and maintain DBS service. In this way, DBS service providers
3 operate in a manner similar to other businesses throughout cities
4 and counties in California.

5 (d) As competition in the market for video services has evolved,
6 the tax and fee structure has not protected the revenue base, and
7 that lack of protection now threatens to undermine financial support
8 for public safety programs.

9 (e) Although DBS providers benefit from both state and local
10 infrastructure as well as state and local laws and policies that
11 facilitate the receipt of the satellite programming in homes and
12 businesses, DBS does not contribute to city and county general
13 funds which support law enforcement and other public safety
14 services. Moreover, DBS providers do not provide emergency alert
15 services in California communities.

16 (f) Cities and counties throughout California have been forced
17 to reduce law enforcement and public safety budgets because of
18 the nationwide economic downturn and the cuts that have been
19 made to programs and services in California.

20 (g) Some video products, services, providers, subscribers, and
21 customers have taxes and fees that generate revenue to fund local
22 public safety programs such as: (1) purchasers and renters of DVDs
23 who pay sales taxes; (2) cable television, open-video system, and
24 video service providers who pay state or local franchise fees; and
25 (3) cable and other non-DBS video subscribers who pay local
26 utility user taxes, some of which must be spent on public safety
27 programs according to ordinances passed in local communities.

28 (h) However, DBS providers make little, if any, money available
29 to support local public safety programs.

30 (i) The Legislature finds that the disparity in the tax and fee
31 burdens on video products, services, and providers has a harmful
32 impact on public safety to the extent that, when customers migrate
33 to DBS service, various revenue bases diminish, and there are less
34 financial resources available for state and local public safety
35 programs.

36 (j) Congress anticipated that the Legislature would enact a state
37 DBS tax framework consistent with California's particular
38 circumstances when it passed Section 602 of the
39 Telecommunications Act of 1996, which authorized states to tax
40 direct-to-home satellite service. Although Section 602 preempts

1 locally imposed and administered taxes and fees on direct-to-home
2 satellite services, it permits states to allocate revenue from state
3 taxes to local governments.

4 (k) To preserve the tax base for local public safety programs
5 and comply with the provisions of Section 602 of the
6 ~~Telecommunication~~ *Telecommunications* Act of 1996, the
7 Legislature creates this part to be administered by the State Board
8 of Equalization, with revenues to be transferred to the Local Safety
9 and Protection Account for continuous allocation to the programs
10 designated in subdivision (b) of Section 10752.2.

11
12 CHAPTER 2. DEFINITIONS
13

14 33003. For purposes of this part:

15 ~~(a) “Cable service” means cable service as defined in subdivision~~
16 ~~(e) of Section 5830 of the Public Utilities Code.~~

17 ~~(b)~~

18 (a) “Direct broadcast satellite television service” and “DBS
19 service” means television programming transmitted or broadcasted
20 by satellite directly to the subscriber’s premises.

21 ~~(e)~~

22 (b) “DBS service provider” or “DBS provider” means any
23 person that sells DBS service.

24 ~~(d)~~

25 (c) (1) “Gross revenues” means all revenue of the DBS service
26 provider, as determined in accordance with generally accepted
27 accounting principles, that is derived from the ~~DBS service~~
28 ~~provider’s provision of video sale of DBS~~ service in this state,
29 including all of the following:

30 (A) All charges billed to subscribers *in this state* for any and
31 ~~all video service provided by the DBS service provider DBS~~
32 ~~service~~, including all revenue related to programming provided to
33 the subscriber, equipment rentals, late fees, and insufficient fund
34 fees.

35 (B) Compensation received by the DBS service provider that
36 is derived from the DBS service provider’s operation with respect
37 to commissions that are paid to the DBS service provider as
38 compensation for promotion or exhibition of any products or
39 services on the provider’s network, such as a “home shopping” or
40 similar channel, subject to subparagraph (D) of paragraph (2).

(C) A pro rata portion of all revenue derived by the DBS service provider or its affiliates pursuant to compensation arrangements for advertising derived from ~~the operation of the provider's video service within the~~ *DBS service in this* state, subject to subparagraph (A) of paragraph (2). The allocation shall be based on the number of subscribers in this state divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

(2) "Gross revenue" does not include any of the following:

(A) Amounts not actually received, *by the DBS service provider*, even if billed, such as bad debt; refunds, rebates, or discounts to subscribers or other third parties; or revenue imputed from the provision of DBS services for free or at reduced rates to any person as required or allowed by law, including, but not limited to, the provision of these services to public institutions, public schools, governmental agencies, or employees except that foregone revenue chosen not to be received in exchange for trades, barter, services, or other items of value shall be included in gross revenue.

(B) Revenues received by any affiliate or any other person in exchange for supplying goods or services used by the DBS service provider to provide ~~video~~ *DBS* services. However, revenue received by an affiliate of the DBS service provider from the affiliate's provision of ~~video~~ *DBS* service shall be included in gross revenue as follows:

(i) To the extent that treating the revenue as revenue of the affiliate, instead of revenue of the ~~video~~ *DBS* provider, would have the effect of evading the payment of taxes that would otherwise be paid to the state under this part.

(ii) The revenue is not otherwise subject to the tax to be paid to the state under this part.

(C) Revenue derived from services ~~classified as nonvideo services under federal law~~ *other than DBS service*, including, but not limited to, revenue derived from *Internet access service*, telecommunications services, and information services, ~~other than video services, and any other revenues attributed by the DBS service provider to nonvideo services in accordance with Federal Communications Commission rules, regulations, standards, or orders.~~ *services.*

(D) Revenue paid by subscribers to "home shopping" or similar networks directly from the sale of merchandise through any home

1 shopping channel offered as part of the ~~video~~ DBS services.
2 However, commissions or other compensation paid to the DBS
3 service provider by “home shopping” or similar networks for the
4 promotion or exhibition of products or services shall be included
5 in gross revenue.

6 (E) Revenue from the sale of ~~video~~ DBS services for resale in
7 which the reseller is required to collect the tax under this part from
8 the reseller’s subscribers.

9 (F) Amounts billed to, and collected from, subscribers to recover
10 any tax, fee, or surcharge imposed by any governmental entity on
11 the ~~video~~ DBS service provider, including, but not limited to, sales
12 and use taxes, gross receipts taxes, excise taxes, utility users taxes,
13 public service taxes, communication taxes, and any other fee not
14 imposed by this section.

15 (G) Revenue from the sale of capital assets or surplus equipment
16 not used by the purchaser to receive DBS services from the seller
17 of those assets or surplus equipment.

18 (H) Revenue from directory or Internet advertising revenue,
19 including, but not limited to, yellow pages, white pages, banner
20 advertisement, and electronic publishing.

21 (I) Revenue received as reimbursement by programmers of
22 specific, identifiable marketing costs incurred by the DBS service
23 provider for the introduction of new programming.

24 (J) Security deposits received from subscribers of a DBS service
25 provider, excluding security deposits applied to the outstanding
26 balance of a subscriber’s account and thereby taken into revenue.

27 (3) For purposes of determining gross revenue under this part,
28 the DBS service provider shall use the same method of determining
29 revenues under generally accepted accounting principles as that
30 which the DBS service provider uses in determining revenues for
31 the purpose of reporting to national and state regulatory agencies.

32 ~~(e) “Local franchise” means a franchise that is issued pursuant~~
33 ~~to Section 53066 of the Government Code including an initial~~
34 ~~authorization, or renewal thereof, including a renewal of an~~
35 ~~authorization, issued by a city or county, whether such~~
36 ~~authorization is designated as a franchise, permit, license,~~
37 ~~resolution, contract, certificate, agreement, ordinance, or otherwise,~~
38 ~~which authorizes the construction or operation of a cable system.~~

1 ~~(f) “Open-video system” (OVS) means open-video system as~~
2 ~~defined in subdivision (m) of Section 5830 of the Public Utilities~~
3 ~~Code.~~

4 ~~(g) “State franchise” means state franchise as defined in~~
5 ~~subdivision (p) of Section 5830 of the Public Utilities Code.~~

6 ~~(h)~~

7 ~~(d) “Subscriber” means any person, firm, partnership,~~
8 ~~corporation, limited liability company, or other entity paying to~~
9 ~~receive video service in this state.~~

10 ~~(i) “Video service” means video service offered by any~~
11 ~~direct-to-home satellite service provider.~~

12 ~~(j) “Video service provider” means an entity providing video~~
13 ~~service including a provider of cable service subject to a local~~
14 ~~franchise, a provider of video service subject to a local franchise,~~
15 ~~a provider of video service subject to a state franchise, or a provider~~
16 ~~of direct broadcast satellite television service and OVS operator~~
17 ~~providing video service.~~

18
19 CHAPTER 3. IMPOSITION OF TAX
20

21 33004. (a) For the privilege of selling ~~video service~~ *DBS*
22 *service to a subscriber* in this state, a tax is hereby imposed on
23 DBS service providers at the rate of 6 percent of its gross revenues.

24 (b) For purposes of this part, in the case of a ~~video~~ *DBS* service
25 that may be bundled or integrated functionally with other services,
26 capabilities, or applications, the tax herein shall be applied to the
27 gross revenue received by the DBS provider. Where the DBS
28 service provider or any affiliate bundles, integrates, ties, or
29 combines ~~video~~ *DBS* services with ~~nonvideo~~ *other products or*
30 *services* creating a bundled package, so that subscribers pay a
31 single fee for more than one class of service or receive a discount
32 on ~~video~~ *DBS* services, gross revenues shall be determined based
33 on an equal allocation of the package discount, that is, the total
34 price of the individual classes of service at advertised rates
35 compared to the package price, among all classes of service
36 comprising the package. The DBS service provider’s offering of
37 a bundled package shall not be deemed a promotional activity. If
38 the DBS service provider does not offer any component of the
39 bundled package separately, the DBS service provider shall declare
40 a stated retail value for each component based on reasonable

1 comparable prices for the product or service for the purpose of
2 determining the tax based on the package discount.

3
4 CHAPTER 4. COLLECTION AND ADMINISTRATION
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6 33006. The taxes imposed by this part are due and payable to
7 the state quarterly on or before the last day of the month next
8 succeeding each calendar quarter.

9 33007. All amounts required to be paid to the state pursuant
10 to this part shall be paid in the form of remittances payable to the
11 board.

12 33008. On or before the last day of the month following each
13 calendar quarter, a return for the preceding quarterly period shall
14 be filed with the board in a form prescribed by the board.

15 33009. The board shall collect the tax pursuant to the Fee
16 Collection Procedures Law (Part 30 (commencing with Section
17 55001)) to the extent these provisions are not inconsistent with
18 this part. For purposes of administration of the tax pursuant to this
19 part, references in the Fee Collection Procedures Law to “feepayer”
20 and “fee” shall include “taxpayer” and “tax.”
21

22 CHAPTER 5. DISPOSITION OF PROCEEDS
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24 33010. All revenues, less refunds, derived under this part shall
25 be deposited into the Local Safety and Protection Account
26 established in the Transportation Tax Fund by Section 10752.2.
27

28 CHAPTER 6. MISCELLANEOUS
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30 33012. The provisions of this part are not severable and, should
31 a court hold in a final nonappealable order that any provision herein
32 is unconstitutional or is otherwise invalid, the whole part shall be
33 null and void.

34 SEC. 2. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

3 SEC. 3. The provisions of Section 1 of this act shall become
4 operative on the first day of the first calendar quarter commencing
5 more than 90 days after the effective date of this act.

6 SEC. 4. ~~The~~ *This* act is an urgency statute necessary for the
7 immediate preservation of the public peace, health, or safety within
8 the meaning ~~to~~ *of* Article IV of the Constitution and shall go into
9 immediate effect. The facts constituting the necessity are:

10 In order to provide funding to support and maintain public safety
11 services that have been reduced due to the economic recession and
12 state's budgetary problems, it is necessary that this act go into
13 immediate effect. However, the provisions of this act shall become
14 operative on the first day of the first calendar quarter commencing
15 more than 90 days after the effective date of this act.